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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,523	01/11/2002	Heribert Baldus	PHDE 010012	6224

24737 7590 07/03/2006

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

JONES III, CLYDE H

ART UNIT PAPER NUMBER

2623

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/043,523	Applicant(s) BALDUS ET AL.	
	Examiner Clyde H. Jones III	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/11/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/11/2002</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Hargrove (US 6,891,804 B2).

Regarding claim 1, Hargrove teaches a transponder (transmitter/receiver) with firmware (software for interfacing with physical/hardware components)

which firmware comprise several overlaid layers 260-200 (fig. 2) containing several software components known as function modules (col. 2, lines 15-17),

where a bottom layer (physical layer 200) contains the function modules which describe the functionality of the hardware components of the transponder (col. 2, lines 9-10; col. 4, lines 47-53, lines 62-64),

and the function modules of the layer (presentation layer 250) lying above the bottom layer jointly (the layers rely on each other for definition of functions; col. 2, lines 16-18) form an application interface which can process an application software of

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various manufacturer-dependent ("heterogeneous") central monitoring systems (Ethernet/fibre channel network monitoring) (col. 2, lines 31-35; in which the presentation layer provides the standard interface for heterogeneous systems, e.g., application programs from software companies, or the application layer 260 to communicate with lower layers of the of the component; furthermore the application layer is the central monitoring software for the various transactions that occur below it, e.g., file transfers and inter host control/access is enabled by the application layer 260; col. 2, lines 34-39), and hence the same transponder can be used in different monitoring systems with different protocols (col. 4, lines 41-46; col. 4, lines 64-67) and management purposes (col. 5, lines 29-41 & col. 6, lines 6-16; in which the components can be used to manage gigabit Ethernet, fibre channels, RAIDS, etc.).

Regarding claim 3, Hargrove teaches the function modules of the layer lying over the bottom layer are provided for access to the other function modules of the same layer and the bottom layer (col. 2, lines 15-18; in which higher layers, i.e., the presentation layer 250, uses its protocols and functions to further access/transact with the lower level protocols down to the physical layer via the stacking/layering method as disclosed).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove (US 6,891,804 B2) in view of Doshi et al. (US 6,041,051).

3.

Regarding claim 2, Hargrove teaches a network element belonging to the transponder is a network element of a fiber channel network with Gigabit Ethernet/IEEE 802.3 standard compatibility (col. 5, lines 30-42; col. 3, lines 9-10), however fails to specifically disclose a HFC network.

In an analogous art Doshi teaches a HFC network for communication between a headend transmission network and LAN using the IEEE 802.3 standard (col. 5, lines 31-44; col. 6, lines 18-20).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Hargrove to include a HFC network as taught by Doshi for the advantage of providing a reduced cost headend system that integrates the LAN and transmission sides of the network (Doshi – col. 5, lines 29-32; Hargrove – col. 5, lines 39-42).

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hargrove (US 6,891,804 B2) in view of Hind et al. (US 6,976,163 B1).

Regarding claim 4, Hargrove teaches the upper layer (application layer 260) is provided for access by a supplier (system user/host) of the central monitoring system (col. 2, lines 34-39) and for the downloading (transfer) of new application programs by the supplier of the central monitoring system (col. 2, lines 35-36), and in that the bottom layer and the layer lying over the bottom layer are provided for access (col. 2, lines 31-33 & col. 4, lines 47-54, lines 57-67). However, Hargrove fails to teach access/downloading of function modules by the transponder manufacturer.

In an analogous art Hind teaches access/downloading of function modules (firmware updates) by the device manufacturer, e.g., to fix Ethernet adaptor/transponder hardware issues in a flexible and cost effective manner (col. 15, lines 1-8; col. 14, lines 58-21; col. 15, lines 10-16).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Hargrove to include access/downloading of function modules by the transponder manufacturer as taught by Hind for the added advantages reducing enterprise customer cost and enabling authorized manufactures to provide updated firmware/patches (Hind – col. 14, lines 58-61; col. 15, lines 12-16).

Regarding claim 5, Hargrove in view of Hind teach the hardware forming the basis of the transponder is intended for exchange while the layer lying over the lower layer and the upper layer can remain unchanged (col. 4, lines 47-54; in which the lower layer enables the exchanging of hardware without making changes to any of the layers above).

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clyde H. Jones III whose telephone number is 571-272-5946. The examiner can normally be reached on 9-5:30 p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Note to Applicant

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

CJ


**CHRISTOPHER GRANT
SUPERVISORY PATENT EXAMINER
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